

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MARK YODER,)	CASE NO.:
)	
<i>Plaintiff,</i>)	JUDGE
)	
v.)	
)	<u>NOTICE OF REMOVAL</u>
ADVANCE STORES COMPANY, INC.)	
d/b/a ADVANCE AUTO PARTS, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

Defendants Advance Stores Company, Inc., Greg Barger, and Ryan Kwiatkowski (mistakenly named Mark Kwiatkowski in the Complaint) (collectively, “Defendants”), by and through their undersigned attorneys, hereby remove this action from the Court of Common Pleas, Mahoning County, Ohio, to this United States District Court for the Northern District of Ohio. Defendants respectfully state that the grounds for removal of this action to this Court are as follows:

1. On April 14, 2021, Plaintiff Mark Yoder (“Plaintiff”) filed a civil action against Defendants captioned: *MARK YODER v. ADVANCE STORES COMPANY, INC., GREG BARGER, AND MARK KWIATKOWSKI* in the Court of Common Pleas, Mahoning County, Ohio as Case No. 21-CV-00644 (the “State Court Lawsuit”). A copy of the Complaint in the State Court Lawsuit is attached hereto as **Exhibit A**.

2. Defendant Advance Stores Company, Inc. was served with the Complaint in the State Court Lawsuit via its registered agent for service of process on April 30, 2021, and the remaining Defendants have not yet been served.

3. Pursuant to 28 U.S.C. §§ 1332 and 1446, Defendants remove this action to the United States District Court for the Northern District of Ohio, Eastern Division, which is the federal judicial district in which the State Court Lawsuit is pending.

4. This action is being removed to this Court pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and it is more likely than not that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. *See e.g., Absolute Mach. Tools, Inc. v. Clancy Mach. Tools, Inc.*, 410 F. Supp. 665 (N.D. Ohio 2005).

5. Plaintiff is a resident of the state of Ohio. *See* Complaint at ¶1.

6. Defendant Advance Stores Company, Inc. is a Virginia corporation with its principle place of business in Virginia.

7. Defendant Greg Barger is a citizen of Pennsylvania.

8. Defendant Ryan Kwiatkowski is a citizen of Pennsylvania.

9. Therefore, there is complete diversity of citizenship here.

10. In his Complaint, Plaintiff asks that the Court award him “in excess of” \$25,000.00 per claim. *See* Complaint at the Wherefore clause, ¶ (b). He also asks for punitive damages in an amount “in excess of” \$25,000 against each defendant, of which there are three. Therefore, Plaintiff’s demanded damages alone exceed \$75,000.00.

11. Moreover, at the time of his termination on or about November 20, 2020 (*see* Complaint at ¶ 45), Plaintiff earned approximately \$53,668.98 annually, which breaks down to \$1,032.10 weekly. Therefore, Plaintiff’s potential back wages to date alone in this matter are approximately \$24,770.30. Assuming this case moved expeditiously to trial within one year from today, Plaintiff’s potential back wages alone would be approximately \$78,439.28.

12. Finally, the demand in the Complaint for “such other and further relief as this Court may deem just and proper” could include injunctive relief, the monetary value of which must be taken into consideration at removal.

13. It is respectfully submitted that the amount in controversy exceeds \$75,000.00.

14. Accordingly, this action may be removed because this Court has diversity jurisdiction.

15. This Notice of Removal is timely under 28 U.S.C. § 1446(a) and (b) because it is being filed within thirty (30) days after receipt of the Complaint, which was served on defendant Advance Stores Company on April 30, 2021 – the remaining defendants have not yet been served.

16. Defendants have also filed a copy of this Notice of Removal of Civil Action with the Clerk of Court for the Court of Common Pleas for Mahoning County, Ohio, the state court in which this action was commenced and pending at the time this Notice of Removal was filed with this Court, as required by 28 U.S.C. § 1446(d).

17. All Defendants have consented to the removal of this case.

18. Nothing in this Notice of Removal is intended or should be construed as any type of express or implied admission by Defendants of any fact alleged by Plaintiff, of the validity or merits of any of Plaintiff’s allegations, or of any liability for the same, each of which are hereby expressly denied, or as any type of express or implied waiver or limitation of any of Defendants’ rights, claims, remedies, and defenses in connection with this action, all of which are hereby expressly reserved. Further, by filing this Notice of Removal, Defendants do not intend to waive, and hereby reserve, any objection as to service, personal jurisdiction, and all other procedural and substantive defenses which are available to them.

WHEREFORE, Defendants request that the above-captioned action now pending in the Court of Common Pleas, Mahoning County, Ohio be removed to this United States District Court for the Northern District of Ohio.

Respectfully submitted,

Jackson Lewis P.C.

/s/ Vincent J. Tersigni

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